to take advantage of the more profitable in-region interLATA business opportunities sooner.

As discussed in the Owen declaration, the fact that the combined company already will own an interLATA network increases the return that can be expected from an investment in work to accelerate satisfaction of Section 271. 45/ Pre-merger U S WEST would expect to incur a certain cost per unit (*e.g.* per-minute) of providing interLATA service (whether it purchased capacity from a different underlying carrier or built interLATA facilities itself). 46/

Post-merger the combined company will be in a different position than U S WEST pre-merger. The unit cost of providing in-region interLATA service will be much lower, since the company already will own an operational interLATA network and the variable costs of using that network for incremental traffic is low, as discussed above. Anticipated margin and profits from interLATA entry by the combined company thus would be greater as a result of the merger, and the opportunity cost of delaying Section 271 compliance would be greater, than it would be for pre-merger U S WEST.

An additional consideration adds to the incentives to obtain prompt interLATA authority. The Qwest network required a substantial capital investment by Qwest – over $2 billion. That network is state-of-the-art and gives Qwest a substantial competitive advantage. Because it was built with the latest

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45/ *Id.* at 8-12.

46/ This "unit cost" would take into account both operational costs and investment costs (if U S WEST chose to build facilities rather than lease them).

technology, the Qwest network also has a tremendous amount of excess capacity. 47/ As time goes by and the combined company cannot make maximum use of that network due to the interLATA prohibition, it will be losing the ability to earn the highest return on its capital investment. 48/ In this sense, the network is a "wasting asset."

In sum, the Merger Opponents are wrong to dismiss the impact of the transaction on the Section 271 process. Until the merged company satisfies Section 271, it cannot reap the financial benefits of its network investment in its own region -- and its out-of-region activity will be hobbled compared to other national interexchange carriers.

D. COMPLAINTS REGARDING U S WEST DO NOT BELONG IN THIS PROCEEDING.

The preceding sections explain why Merger Opponents calling for conditions have failed to demonstrate a legal foundation for their request. They have failed to show that the merger of Qwest and U S WEST will cause any public interest harm. Meanwhile, they have disregarded the clear public interest benefits arising from the transaction.

In fact, the Merger Opponents barely pay lip service to the legal standards governing the Commission's review of merger applications. They transparently seek to convert this proceeding into a forum for redress of their own

47/ As noted above, the Qwest network has more bandwidth than the networks of AT&T, MCI, and Sprint combined. *See* "Building the Future-Proof Telco," *Wired,* May 1998 at 127.

private grievances, ranging from the scope of U S WEST's specific obligations to them under Section 251, to its billing practices, to the quality of its local service.

But the Merger Opponents have failed to demonstrate that this merger proceeding is the appropriate forum for resolving such issues. Clearly, it is not. First – and fundamentally – the commenters entirely fail to demonstrate how grant of the Application and consummation of the merger would cause the specific harms they claim; for that reason they lack standing to raise them here. 49/ Second, they just as clearly fail to establish that the merger would result in any harm to the public interest; they therefore have not laid the necessary predicate for the requested conditions on grant of the Application. Finally, and in any event, these commenters fail to recognize that other more appropriate forums exist for airing their issues, including interconnection negotiations and arbitrations, and state and federal regulatory commission complaint processes. Indeed, in some cases the Merger Opponents already are taking advantage of those vehicles.

48/ Owen Declaration, Attachment B, at 10.

49/ *See California Ass'n of the Physically Handicapped, Inc. v. FCC*, 840 F.2d 88, 91 n.6 (D.C. Cir. 1988) (*"CAPH v. FCC"*) (opponents of broadcast license transfer lack standing where their objections are based on alleged practices of transferor and speculative assertions that transferee will perpetuate those practices). The merger Opponents, like the petitioners in *CAPH v. FCC*, cannot trace the harms they allege, pertaining to U S WEST's obligations under Section 251 and other related issues, to the transaction at issue. Instead, their "real plea is that the transfer will furnish no cure – it will not cause the injury to abate." *California Ass'n of the Physically Handicapped, Inc. v. FCC*, 778 F.2d 823, 825 (D.C. Cir. 1985). But this plea is not sufficient to establish standing. *Id. See also Microwave Acquisition Corp. v. FCC,* 145 F.3d 1410, 1413 (D.C. Cir. 1998) (appellant lacked standing because, inter alia, the relief sought would not remedy the alleged injury).

The complaints raised by the Merger Opponents principally fall into three categories, none of them connected to the merger: (1) state issues related to U S WEST local service quality, interconnection negotiations, and similar matters; (2) open policy issues that already are pending in Commission rulemaking or complaint proceedings (or are properly addressed in such proceedings); and (3) previously resolved issues that commenters seek to reopen collaterally in the context of this merger. Again, none of these issues arises from the Qwest-U S WEST Merger. As demonstrated below, none should be addressed in this transfer of control proceeding.

The state-related objections include, for example, the contention of McLeodUSA Telecommunications, Inc. ("McLeod") that the merged entity should be required to "make the investments necessary" to improve the quality and availability of U S WEST wholesale and retail services. 50/ McLeod's only attempt to link this concern to the merger is its speculative assertion that the merger could result in a "diversion of resources" from in-region local exchange services to efforts to compete in other telecommunications markets. 51/ But this proceeding is clearly not the proper forum for such allegations. 52/ Service quality issues should be

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50/ McLeod Comments at 28, 42.

51/ *Id.* at 28.

52/ Similarly, the suggestion by McLeod and NEXTLINK Communications, Inc., *et al.*, that the merged entity may cut its dividend to invest more heavily in advanced service facilities obviously does not transform their service quality complaints into a merger concern. *See* McLeod Comments at 27; Joint Comments of NEXTLINK Communications, Inc., Advanced Telcom Group, Inc., GST Telecommunications, Inc., and FirstWorld Communications, Inc., at 14. The resolved in appropriate state proceedings unrelated to this merger. 53/ Other complaints regarding U S WEST service performance, 54/ or regarding the status of state interconnection and arbitration proceedings, 55/ are equally out of place.

Similarly, the Commission should reject attempts by Merger Opponents to impose special conditions on the combined company addressing issues

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suggestion misses the mark in any event. This Commission can have no issue with any future Qwest decision to invest capital in its network rather than distribute dividends to shareholders.

53/ As the Commission concluded in the *AT&T-TCI Order*, "[the] enforcement of state regulations [is] best carried out at the state level." *AT&T-TCI Order* ¶ 58. U S WEST would note that more than one of the service quality grievances referenced in McLeod's comments, including the alleged restrictions on the number of U S WEST service conversions, *see* McLeod Comments at 14, already have been resolved in state commission proceedings.

54/ *See e.g.,* New Mexico Rural Development Response Council Comments at 2 (specific service problems in rural New Mexico are properly addressable to state regulators).

55/ The comments of Allegiance and FirstWorld with respect to interconnection agreements are confusing at best to U S WEST because they do not conform to actual experience. Allegiance, for example, argues that as a condition of approval the combined company should be required to enter into region-wide interconnection agreements (which U S WEST already is willing to negotiate) and be subject to MFN obligations with respect to both in- and out-of-region interconnection agreements. *See* Allegiance Comments at 12–13. Yet, in August 1999, Allegiance opted into existing interconnection agreements with U S WEST in Washington and Colorado. The negotiation process was completed in both states without arbitration; the Washington agreement has been approved by the PUC, and the Colorado agreement is signed and pending approval; interim collocation arrangements have been made; and no disputes exist. Meanwhile, FirstWorld (filing jointly with NEXTLINK, *et al.*) demands conditions relating to interconnection and provision of unbundled network elements. Comments of NEXTLINK, *et al.*, at 20-26. Yet FirstWorld has requested to opt into an existing interconnection agreement in Oregon and Colorado. U S WEST has agreed to these opt-in agreements and is waiting for their signed return from FirstWorld. Again, no disputes are pending in either state.

that properly belong in generic rulemaking proceedings -- and in some cases already are the subject of such proceedings. Rhythms, for example, proposes that the merger be conditioned on improvements in the provision of OSS for advanced services, collocation at remote locations, and work-arounds for the presence of digital loop carrier facilities. 56/ Covad requests conditions relating to UNE loop pricing, retail/wholesale separation, and OSS for advanced services, and, as noted above, Allegiance seeks a condition that the merged company adopt a regionwide "most favored nation" policy for interconnection arrangements. 57/

But these generic issues belong in generic proceedings. They do not arise because of the merger, and grant or denial of this Application will not resolve the Merger Opponents' complaints. 58/ In previous merger proceedings, the Commission repeatedly refused to consider unrelated matters. 59/ In seeking a

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56/ *See* Rhythms Comments at 6, 12. Rhythms, meanwhile, recently initiated a state commission proceeding against U S WEST in Colorado on the OSS issue. *See* Docket No. 99F-493T.

57/ Covad Comments at 24-26; Allegiance Comments at 10.

58/ TSR Wireless LLC ("TSR") makes the novel claim that its disagreement with U S WEST over whether Section 251(b)(5) of the Act requires LECs to provide unlimited free interconnection to one-way paging providers (such as TSR) constitutes a "basic qualifications" issue requiring dismissal of the Applications. *See* Comments of TSR at 7. This argument is plainly without merit and constitutes yet another grievance with U S WEST having no real relation to this merger. The obligations of LECs under Section 251 to carriers such as TSR are currently being considered by the Commission in industry-wide proceedings. Moreover, TSR has already filed a complaint with the Commission based on this disagreement.

59/ *See, e.g., Applications for Consent to Transfer of Control of Southern New England Telecommunications Corp.*, 13 FCC Rcd 21292, 21306, ¶ 29 (1998); *AT&T-TCI Order,* 14 FCC Rcd at 3183, ¶ 43; *Bell Atlantic-NYNEX Order,* 12 FCC Rcd at 20083, ¶ 210. In each instance, the Commission specifically declined to review reversal of that policy here, the commenters do not credibly suggest that the issues they pose arise out of the merger. The Commission should decline to pluck issues out of pending proceedings or address other generic issues in the limited context of this Application.

Finally, some Merger Opponents have proposed conditions addressing matters already conclusively resolved by the Commission or subject to existing Commission rules. These comments are no more appropriate for this proceeding. For example, the Coalition to Ensure Responsible Billing ("CERB") argues that the merger should be conditioned on a commitment by U S WEST to allow other service providers to include their charges on its local bill. 60/ This dispute, however, was decided thirteen years ago when the Commission deregulated billing and collection services. 61/ CERB does not remotely justify using this proceeding to reverse that decision, let alone only for the post-merger company.

For similar reasons, the Commission should reject Allegiance's plea to condition approval of the merger on compliance with the affiliate transaction and collocation rules, and the Joint Commenters' request that approval be conditioned

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matters being considered in rulemaking proceedings because it determined that the public interest would be better served by deciding the matter in "a broader proceeding of general applicability." *See AT&T-TCI Order*, 14 FCC Rcd at 3183, ¶ 43.

60/ CERB Comments at 2.

61/ *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150 (1986) (concluding that a BOC is neither required to, nor precluded from, billing its customers for the interexchange services of any interexchange carrier), *recon. denied*, 1 FCC Rcd 445 (1986).

on compliance with various local competition regulations. 62/ Those rules are what they are and will apply to the merged company just as to any other. 63/ There is no cause for a condition requiring compliance for this single company. As the Commission concluded in declining to impose a condition mandating AT&T-TCI's compliance with the program access rules, because "nothing in the merger transaction would shield the merged company from the program access rules * * * [a] condition therefore is unnecessary." 64/ The same answer applies here.

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This Application should not be controversial or difficult for the Commission to grant promptly. Contrary to the suggestions of certain commenters, the merger of Qwest and U S WEST raises no public interest concerns, and promises significant benefits to consumers and competition. It easily passes the standard for Commission approval under the Communications Act.

62/ *See* Allegiance Comments at 6, 11; Joint Commenters' Comments at 3. U S WEST would note that McLeod is raising "dated" grievances that already have been resolved. For example, McLeod's concerns with the elimination of the "Assumed 9" function and the provision of station message detail recording service have been settled through business-to-business solutions. *See* McLeod Comments at 14.

63/ *See Accounting Safeguards under the Telecommunications Act of 1996*, 12 FCC Rcd 2993 (1996); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act*, 11 FCC Rcd 21905 (1996); *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, First Report & Order (March 31, 1999).

64/ *AT&T-TCI Order*, 14 FCC Rcd at 3179, ¶ 34; *see also* id. at 3179-81, ¶¶35-40.

II. QWEST WILL DIVEST PROHIBITED INTERLATA SERVICES AS IT COMMITTED TO DO IN THE APPLICATION.

A. The Commission Should Not Assume A Future Violation Of The Law.

The Application already includes a commitment that, in order to comply with Section 271 of the Act, Qwest will discontinue providing prohibited interLATA services in U S WEST's 14-state region as of the merger closing. 65/ Notwithstanding, several commenters suggest that the Commission should delay approval of the merger while it scrutinizes the precise details by which Qwest will bring itself into compliance with the Act. 66/ Essentially these commenters demand that the Commission take on the job of micro-managing Qwest's divestiture.

These arguments amount to nothing more than unsupported allegations that Qwest will not satisfy its divestiture commitment. Commenters making these arguments, however, provide no evidence at all to support their suggestion that Qwest will violate Section 271. The Commission routinely rejects similar requests to deny or delay action on proposed transactions based on such unsupported allegations. 67/ It should do so again here. 68/

65/ Application at 11, 13-14.

66/ *See, e.g.*, AT&T Comments at 10-15; MCI WorldCom Comments at 7; McLeod Comments at 33-34; NEXTLINK et. al. Comments at 16-18.

67/ *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control*, 13 FCC Rcd 18025, 18068-69, 18134, 18145-48, ¶¶ 73-74, 193, 211, 213 (1998); *see also AirTouch Communications, Inc., Transferor, and Vodafone Group, PLC,. Transferee, for Consent to Transfer of Control of Licenses and Authorizations*, 16 C.R. (P & F) 125, 1999 FCC LEXIS 3007, ¶ 9 (WTB 1999); *Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer of Control*, 12 FCC Rcd 2624, 2637-28, ¶¶ 25-28, 31, 42 (1997).

B. Qwest Is Moving Forward Promptly To Prepare For Divestiture.

Notwithstanding the implications of commenters, since filing the Application Qwest already has made substantial progress in the complex administrative process of implementing its divestiture. Qwest has been engaged in a review of all retail and wholesale customer contracts to identify interLATA services that must be divested as of closing. Qwest also has been examining operational issues associated with divestiture.

For the convenience of the Commission, we are submitting as Attachment C a detailed summary of Qwest's current plans for in-region interLATA divestiture (the "Qwest Divestiture Plan"). This document should further assure the parties here that Qwest will fully divest its in-region interLATA business, and that post-merger, the company will comply fully with Section 271.

The Qwest Divestiture Plan embodies two over-arching principles: (1) minimize the impact of divestiture on customers, with a seamless transition and no increase in rates, and (2) comply fully with Section 271. Qwest anticipates selling its prohibited interLATA service offerings to one or more independent common carriers with Section 214 certificates and operating authority in the

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68/ The applicants take strong exception to AT&T's suggestion that the Commission's rejection of an earlier joint marketing arrangement between Qwest and U S WEST has any relevance to this proceeding. *See* AT&T Comments at 2-3, 8-10, citing *AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd 21438 (1998) ("*Teaming Order*"), *aff'd sub nom. U S WEST Communications, Inc. v. FCC*, No. 98-1468 (D.C. Cir. June 8, 1998). Qwest and U S WEST are fully committed to comply with the Telecom Act. *The Teaming Order* clarified the law with respect to joint marketing and other matters in important respects, and actually makes it easier for Qwest to carry out its divestiture.

relevant states. Each of these purchasing carriers will be technically and operationally able to provide service over their own transmission facilities in a timely fashion without customer disruption.

Qwest and the purchaser or purchasers will take the necessary steps to make the transition smooth and uneventful for customers. The purchasers will be obliged to assume all of Qwest's existing contractual obligations for the divested in-region interLATA telecommunications, and will commit not to raise rates for Qwest's tariffed customers for a certain time period. Thereafter, however, the purchasing carrier or carriers will have full rights to set their own rates for the divested services, and in every other respect will operate completely independently of Qwest. To the extent that the purchasers obtain any interconnection, access, or other telecommunications services from the U S WEST operating companies, they would do so at the same non-discriminatory rates, terms, and conditions as all other carriers.

As the Qwest Divestiture Plan demonstrates, Qwest is preparing to discontinue all of its prohibited interLATA service offerings within the U S WEST region. The service offerings to be divested include all relevant voice and data services offered to residential and business customers (including both retail and wholesale services). Specifically, Qwest anticipates divesting the following services:

- interLATA switched long distance service originating in the U S WEST region;
- interLATA 800 services terminating in the U S WEST region;
- interLATA private line voice and data services originating or terminating in the US WEST region that cross LATA boundaries;

- in-region interLATA calling card, prepaid phone card, and operator-assisted services; and
- the in-region interLATA transmission component of dial-up and dedicated Internet access services and Internet-based hosting services.

The sale of these services will be final and irrevocable, with no right for Qwest to re-acquire the services or customers at any point. Qwest does not, however, plan to sell its existing fiber optic transmission plant. It will continue to use that plant to provide out-of-region and other telecommunications services permitted by Sections 271(b)(2) and (3) of the Act.

The attached Qwest Divestiture Plan includes a detailed legal analysis of the authority for the scope of the divestiture planned by Qwest. It also describes the support functions useful in meeting customer requirements that the purchaser or purchasers of the divested services may acquire from Qwest under arm's length contracts, and explains why Qwest may provide those functions consistent with Section 271 and other governing legal authority.

In sum, the Qwest Divestiture Plan constitutes strong evidence that Qwest will carry through its commitment to divest all of its in-region interLATA services prior to closing the merger. Other commenting parties have supplied no evidence to the contrary.

C. Commenters' Other Divestiture Arguments Are Misplaced.

AT&T, MCI WorldCom, and McLeod raise a number of misplaced contentions regarding the scope of the divestiture plan. We show below that each of these arguments is baseless, and the Commission should not allow any of them to delay its approval of the proposed transfer of control.

First, the Commission should disregard AT&T's unsupported contention that, in the context of Qwest's anticipated transfer of its in-region originating switched long distance business, a waiver of the Commission's customer authorization and verification requirements would not be appropriate. 69/ The Commission has granted numerous waivers of those requirements in comparable situations. 70/ Such a waiver is necessary, and perfectly appropriate, to facilitate a simple and straightforward sale of a non-dominant carrier's customer base and enable the carrier to exit a market without inconveniencing customers. 71/

Second, the Commission should not be diverted by MCI WorldCom's oft-repeated, generic argument that Section 271 precludes BOC affiliates from providing Internet access services. 72/ As described more fully in the attached

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69/ AT&T Comments at 12 & n.43.

70/ *See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, One Call Communications, Inc. d/b/a Opticom Request for Waiver*, CC Docket No. 94-129, DA 99-1033 (Com. Car. Bur., released May 28, 1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Communications Co., L.P., Request for Waiver*, CC Docket No. 94-129, DA 99-1112 (Com. Car. Bur., released June 17, 1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, AT&T Corp. Request for Waiver*, CC Docket No. 94-129, DA 99-1718 (Com. Car. Bur., released Aug. 27, 1999).

71/ In any event, AT&T's point is also procedurally improper. Qwest has not requested such a waiver in the instant proceeding. It will do so once a buyer for the applicable services is identified, and AT&T can comment then.

72/ MCI WorldCom Comments at 6-7.

Qwest Divestiture Plan, 73/ Qwest will structure its information service offerings to comply with the Commission's clear statement that BOC affiliates may, consistent with Section 271, provide in-region information services that do not "incorporate as a necessary, bundled element an interLATA telecommunications transmission component, provided to the customer for a single charge." 74/ Qwest's continuing Internet access, web hosting, and other Internet-related service offerings will be structured similarly to the existing offerings of other BOCs and their affiliates.

MCI WorldCom concedes that it has raised this argument many times in other contexts, 75/ but the Commission has never conclusively addressed the issue. 76/ There is no reason to allow this merger application proceeding to become bogged down by uncertainties that affect the entire industry. If and when the Commission adopts relevant conclusions regarding the status of particular interLATA information services in the future, the merged company will comply fully with such conclusions.

73/ Attachment C at 15-16.

74/ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905, 21961-62, ¶ 115 (1996) ("*Non-Accounting Safeguards Order*").

75/ *Id.* at 7 & n.2.

76/ *Bell Atlantic Tel. Cos. Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, 11 FCC Rcd 6919, 6935-36, ¶¶ 49-51 (Com. Car. Bur. 1996), *pet. for review dismissed sub nom. Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, 14 FCC Rcd 4289, 4312-13, ¶¶ 36-37 (1999); *Non-Accounting Safeguards Order,* 11 FCC Rcd at 21966-68, ¶¶ 125-27.

Third, McLeod's argument regarding dark fiber is incorrect. 77/ McLeod understands the distinction between the sale of dark fiber facilities and the lease of dark fiber for a term of years. However, McLeod mistakenly assumes that Qwest has leased dark fiber to Frontier, GTE, and MCI WorldCom. 78/ To the contrary, Qwest has sold those parties indefeasible rights of use ("IRUs") in fiber facilities, conveying ownership rights in specific dark fibers for the economically useful life of the fiber. The purchasers obtained full control over use of the fiber and are the owners for tax and accounting purposes. Qwest in turn booked the associated revenue as "network construction." Qwest has no legal ability to unwind these completed sales.

Moreover, McLeod provides no support for its suggestion that Qwest's provision of certain maintenance services in connection with these IRU sales somehow converts them into provision of interLATA telecommunications. 79/ As the Commission correctly concluded in the *Second Reconsideration Order*, 80/ the

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77/ McLeod Comments at 37, citing *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, CC Docket No. 96-149, Second Order on Reconsideration, 12 FCC Rcd 8653, 8683 n.110 (1997), *aff'd*, Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044 (D.C. Cir. 1997) ("*Second Reconsideration Order*").

78/ McLeod Comments at 39. As noted in the Qwest Divestiture Plan, Qwest plans to discontinue its activity of leasing dark fiber that crosses LATA lines in the U S WEST region. *See* Attachment C at 7.

79/ McLeod Comments at 39.

80/ *Second Reconsideration Order*, 12 FCC Rcd at 8683 n.110. Qwest and U S WEST disagree with the Commission's dictum, in the same footnote, that the lease of dark fiber constitutes a telecommunications service and could violate Section 271. That dictum is based, incorrectly, on a pre-1996 Act decision of the Commission that sale of telecommunications network facilities does not constitute "interLATA service," which the Act defines as "telecommunications between a point located in a [LATA] and a point located outside such [LATA]." 81/ In turn, "telecommunications" is defined by the Act as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received." 82/ In this case, the only activity at issue is a maintenance service provided to an unaffiliated carrier, and Qwest is not engaged in any transmission whatsoever. 83/

D. Prompt Grant Of This Application Is Necessary To Help Ensure A Smooth Customer Transition.

It is not surprising that certain Qwest competitors want the Commission to delay approval of this Application. The Qwest divestiture is a large undertaking. It will require substantial work to ensure that customers are not adversely impacted. Qwest already is taking unilateral steps to prepare for

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is inconsistent with the statutory definitions enacted in 1996. Nonetheless, as noted above, Qwest plans to divest its existing offerings of in-region, interLATA dark fiber *leases*.

81/ 47 U.S.C. § 153(21).

82/ *Id.* at § 153(43).

83/ *C.f., Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, ¶ 290 (1997) (satellite operator providing transponders, including related operations and maintenance, is not transmitting information, and thus is not engaged in "telecommunications").

We note that McLeod's out-of-context quotations from a letter from a Qwest attorney, McLeod Comments at 35-36, are not relevant to this proceeding. The Qwest attorney wrote the letter at a time of significant uncertainty regarding the Qwest divestiture plan, and certain statements in the letter are not correct.

divestiture. But next it will need to deal with third party purchasers, who in turn will need to devote resources of their own to negotiate purchase agreements and then undertake their own tasks to prepare to take over the divested services. Furthermore, both Qwest and purchasers will need to address customer questions that already are arising in the market, and in some instances work directly with customers to address their specific requirements.

The sooner that the Commission grants this Application, the more smoothly this divestiture process will run. The Commission will recall that when the Bell System divestiture took place, approval of the consent decree and plan of reorganization occurred well before divestiture itself. The Qwest divestiture here is much more simple, but the same general considerations apply. The sooner the Commission grants this application, adding certainty to the merger process, the easier it will be for Qwest and third parties to implement the divestiture plan in a manner with the least impact on customers. Qwest and U S WEST fully expect to close their merger in the second quarter of 2000. Prompt approval of this Application will facilitate the divestiture activity necessary before that closing, to the ultimate benefit of Qwest's customers. In contrast, any material delay in this proceeding will introduce unnecessary customer uncertainty, and may reduce the amount of time available before closing to complete the necessary transitional work.

CONCLUSION

For the reasons stated above and in the initial application, Qwest and U S WEST urge the Commission to approve this merger promptly, and to do so without attaching conditions. The merger does nothing to increase the likelihood of anticompetitive or discriminatory activity by U S WEST. On the contrary, this merger brings numerous public interest benefits to consumers, including the acceleration of deployment of advanced services by the combined company. The merger will advance competition both inside and outside the U S WEST region, and will provide powerful new incentives for satisfaction of Section 271 in the U S WEST region.

Respectfully submitted,

QWEST COMMUNICATIONS INTERNATIONAL INC.	**U S WEST, INC.**
By ____________	By ____________
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Dated: October 18, 1999

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ATTACHMENT A

DECLARATION OF
DENNIS W. CARLTON AND HAL S. SIDER

DECLARATION OF DENNIS W. CARLTON AND HAL S. SIDER

In the matter of
QWEST / U S WEST MERGER APPLICATION

October 18, 1999

I. QUALIFICATIONS

1. I, Dennis W. Carlton, am Professor of Business Economics at the Graduate School of Business of The University of Chicago. I received my B.A. in Applied Mathematics and Economics from Harvard University and my M.S. in Operations Research and Ph.D. in Economics from the Massachusetts Institute of Technology. I have served on the faculties of the Law School and the Department of Economics at The University of Chicago and the Department of Economics at the Massachusetts Institute of Technology. I specialize in the economics of industrial organization, which is the study of individual markets and includes the study of antitrust and regulatory issues. I am co-author of Modern Industrial Organization, a leading textbook in the field of industrial organization, and I also have published numerous articles in academic journals and books. In addition, I am Co-Editor of the Journal of Law and Economics, a leading journal that publishes research applying economic analysis to industrial organization and legal matters. I have served as an Associate Editor of the International Journal of Industrial Organization and Regional Science and Urban Studies, and have served on the Editorial Board of Intellectual Property Fraud Reporter.

2. In addition to my academic experience, I am President of Lexecon Inc., an economics consulting firm that specializes in the application of economic analysis to legal and regulatory issues. I have served as an expert witness before various state and federal courts, and I have provided expert witness testimony before the U. S. Congress and a variety of state and federal regulatory agencies, including the Federal Communications Commission (FCC). I also have served as a consultant to the Department of Justice on the Merger Guidelines of the

Department of Justice and Federal Trade Commission, as a general consultant to the Department of Justice and Federal Trade Commission on antitrust matters, and as an advisor to the Bureau of the Census on the collection and interpretation of economic data. I also have provided testimony on telecommunications matters before Congress, the federal courts, and federal and state regulatory agencies and have published academic articles on telecommunications issues. A copy of my curriculum vitae is attached as Exhibit 1 to this affidavit.

3. I, Hal S. Sider, am a Senior Economist and Vice-President of Lexecon Inc. I received a B.A. in Economics from the University of Illinois in 1976 and a Ph.D. in Economics from the University of Wisconsin (Madison) in 1980. I have been with Lexecon since 1985, having previously worked in several government positions. I specialize in applied microeconomic analysis and have performed a wide variety of economic and econometric studies relating to industrial organization, antitrust and merger analysis. I have published a number of articles in professional economics journals on a variety of economic topics and have testified as an economic expert on matters relating to industrial organization, antitrust, labor economics and damages. In addition, I have directed several studies of competition in telecommunications industries and have previously testified as an expert on telecommunications matters before the FCC and public utility commissions in New York, Colorado, West Virginia, Florida, and Montana. I have also published an academic article (with Kenneth Arrow and Dennis Carlton) on telecommunications issues. A copy of my curriculum vitae is attached as Exhibit 2 to this affidavit.

4. We have been asked to comment on certain aspects of the proposed merger of U S WEST with Qwest. We conclude that demand and supply conditions in the telecommunications industry are changing rapidly and that transactions such as the proposed merger of Qwest and U S WEST can enable firms to better respond to these changes. We also conclude that the proposed transaction does not give rise to the competitive concerns that the FCC raised in recent ILEC/ILEC mergers or that commenters have raised in this proceeding.

Accordingly, there is no competitive justification for imposing conditions on approval of the proposed merger.

II. MERGERS CAN BE A RESPONSE TO CHANGES IN DEMAND AND SUPPLY CONDITIONS

5. Mergers typically enable firms to realize efficiencies relative to what each could achieve independently. These efficiencies can include reduced costs of providing services and/or improving the ability of firms to introduce and deploy new products and services. In this way, mergers can enable firms to respond to changes in industry conditions more rapidly than would be possible absent a merger.

6. In this section, we first present a brief overview of the rapid changes in demand and supply conditions now facing the telecommunications industry. We then briefly review how recent telecommunications mergers, including the proposed merger of Qwest and U S WEST, are attempts to respond to these changes.

A. OVERVIEW OF CHANGES IN DEMAND AND SUPPLY CONDITIONS

1. Increased demand for data services

7. The demand for data services has grown dramatically in recent years, and this trend is expected to continue. Salomon Smith Barney, for example, projects that over the next several years, revenue from circuit switched services (i.e., traditional long distance voice services) will grow by three to five percent annually; data services revenue will grow 20 to 25 percent annually, and Internet revenue will grow 40 to 45 percent annually.[1] Between 1993 and today, the number of computers with Internet access grew from 1.3 million to more than 80 million.[2]

1. Salomon Smith Barney, "FON Long Distance Industry Worries Provide Good Investment Opportunity," August 23, 1999.
2. Oxman, J., "The FCC and the Unregulation of the Internet," FCC Office of Plans and Policy Working Paper No. 31, July 1999.

2. New technologies

8. Closely related to the growing demand for data services is the rapid deployment of high-capacity packet-switched fiber optic networks in recent years. These technologies reflect a fundamental change in the structure of telecommunication networks:

> The way that communications networks were designed and deployed in the past is under review because of the Internet and, in part, because of substantial improvements in digital processing. Instead of routing data over the voice network [...] some players plan to route voice on networks designed to handle data. The new networks use packet-switched technology rather than circuit switching technology used in the voice network ...[3]

9. Packet switched technology is rapidly displacing circuit switched technology. AT&T, for example, has announced that it intends to stop buying traditional telephone switches by the end of 1999 and instead will exclusively deploy other technologies including packet switches and routers.[4] Sprint and MCI WorldCom are also deploying packet-based capacity in their networks.[5] Packet-based long distance networks are being deployed, or have been deployed, by Qwest, Williams,[6] Level 3,[7] and Frontier.[8]

10. Digital subscriber line (DSL) technology is also being deployed in order to increase the capacity of existing copper networks, enabling residential customers to obtain broadband Internet services. This technology also enables businesses to use existing phone lines to connect remote locations to private data networks as well as the Internet. AT&T and other cable television companies are also upgrading their cable television systems in order to deploy broadband Internet services to residential customers.

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3. Pershing Investment Research, Industry Brief, February 16, 1999, p. 4.
4. NY Times, March 8, 1999, Section C, p. 1; PC Week, March 22, 1999.
5. Communications News, March 1999; NY Times, March 8, 1999, Section C, p. 1.
6. http://www.williamscommunication.com/network/index.html.
7. http://ws0den.level3.com/companynews/may1099_ipcross.html.
8. Information Week, July 26, 1999.

3. Increased demand for bundled services

11. There is also increased demand for bundled services among residential and small business customers. For example, companies such as SNET and GTE that have been permitted to provide long distance service have been successful in providing bundled local and long distance service. Between 1994 and 1998, SNET gained approximately 900,000 long distance subscribers, roughly 40 percent of the local lines it serves.[9] GTE has gained more than 3 million long distance subscribers since it began offering services roughly three years ago.[10] Customer satisfaction with bundled services is also reflected in the J.D. Power and Associates 1999 Residential Long-Distance Customer Satisfaction Study, which states that "[a]nother major finding from the study reflects the positive impact bundling [of local and long distance service] can have in meeting customer expectations in the telecommunications industry."[11]

4. Increased demand for multilocation services among business customers

12. Among business customers, the growing diversity and complexity of telecommunications services has generated demand for telecommunications firms to provide "one-stop shopping" for a bundle of services. There is also increased demand for firms to provide an "end-to-end" service and a "single point of contact" to multiple location customers.[12] Analysts have stressed that local exchange carriers that fail to provide such services will be at a significant competitive disadvantage relative to those that do.[13]

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9. SBC-SNET Memorandum Opinion and Order, FCC 98-276, October 15, 1998, ¶3.
10. http://www.gte.com/AboutGTE/Investor/2Q99/summary.html.
11. J.D. Power and Associates Press Release, "SNET and Sprint Top Performers in Residential Long-Distance Customer Satisfaction," July 29, 1999. [http://www.jdpower.com/jdpower/releases/usld072999.htm].
12. "Telcom Tangle," PC Week, June 28, 1999; MCI WorldCom Opinion and Order, FCC 98-255, September 14, 1998, ¶199.
13. Salomon Smith Barney, "Review of Our Position on RBOCs," March 11, 1999.